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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

13 **ENRIQUE ANTONIO HERNANDEZ**

14 Registered Nurse License Applicant

15 Respondent.

Case No. *2013- 940*

16 **STATEMENT OF ISSUES**

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about May 2, 2012, the Board received an application for a Registered Nurse
23 License from Enrique Antonio Hernandez (Respondent). On or about April 12, 2012, Enrique
24 Antonio Hernandez certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on August 9,
26 2012.

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1 5. Section 490 states, in pertinent part:

2 "(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under the
15 provisions of Section 1203.4 of the Penal Code. . . ."

16 6. Section 2736 provides that the Board of Registered Nursing (Board) may deny a
17 license when it finds that the applicant has committed any acts constituting grounds for denial of
18 licensure under section 480.

19 7. Section 2761 states, in pertinent part:

20 "The board may take disciplinary action against a certified or licensed nurse or deny an
21 application for a certificate or license for any of the following:

22 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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24 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
26 Act] or regulations adopted pursuant to it.

27

28 "(f) Conviction of a felony or of any offense substantially related to the qualifications,

1 functions, and duties of a registered nurse, in which event the record of the conviction shall be
2 conclusive evidence thereof. . . ."

3 8. Section 2762 states, in pertinent part:

4 "In addition to other acts constituting unprofessional conduct within the meaning of this
5 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
6 chapter to do any of the following:

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8 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
9 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
10 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
11 himself or herself, any other person, or the public or to the extent that such use impairs his or her
12 ability to conduct with safety to the public the practice authorized by his or her license.

13 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
14 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
15 or the possession of, or falsification of a record pertaining to, the substances described in
16 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
17 thereof. . . ."

18 **REGULATORY PROVISION**

19 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

20 "A conviction or act shall be considered to be substantially related to the qualifications,
21 functions or duties of a registered nurse if to a substantial degree it evidences the present or
22 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
23 safety, or welfare. . . ."

24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 **(Conviction of a Substantially Related Crime)**

26 10. Respondent's application is subject to denial under section 480, subdivision (a)(1),
27 and section 2761, subdivision (f), in that on or about March 13, 2009, Respondent was convicted
28 of a crime substantially related to the qualifications, functions or duties of a registered nurse

1 which to a substantial degree evidences his present or potential unfitness to practice in a manner
2 consistent with the public health, safety, or welfare. The circumstances of the conviction are as
3 follows:

4 a. On or about March 13, 2009, after pleading guilty, Respondent was convicted of one
5 misdemeanor count of violating Vehicle Code section 23152(a) [drive while under the influence
6 of alcohol/drugs] in the criminal proceeding entitled *The People of the State of California v.*
7 *Enrique Antonio Hernandez* (Super. Ct. Riverside County, 2008, No. INM192054). The Court
8 sentenced Respondent to 50 days jail, placed him on 36 months probation, and ordered him to
9 complete a Three-Month First-Offender DUI Program. On or about August 11, 2010, the Court
10 dismissed the matter pursuant to Penal Code section 1203.4

11 b. The circumstances underlying the conviction are that on or about September 20,
12 2008, Respondent admittedly drove a motor vehicle while he was under the influence of alcohol.
13 The circumstances were such that, in an attempt to park his vehicle in a hotel parking structure,
14 Respondent drove past a hotel valet, over a curb through flower beds and across a lawn. He then
15 entered the hotel parking structure and parked his vehicle on the second level with two flat tires.
16 He was contacted by the arresting officers at that time and arrested with a BAC of .25%.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Unprofessional Conduct)**

19 11. Respondent's application is subject to denial under section 2761, subdivision (a),
20 and 2762, subdivisions (b) and / or (c), on the grounds of unprofessional conduct, in that on or
21 about March 13, 2009, Respondent was convicted of a crime involving alcohol which resulted
22 from circumstances on or about September 20, 2008, when he dangerously used alcoholic
23 beverages. Complainant refers to and by this reference incorporates the allegations set forth
24 above in paragraph 10, subparagraphs a and b, inclusive, as though set forth fully.

25 **THIRD CAUSE FOR DENIAL OF APPLICATION**

26 **(Conduct Warranting License Discipline)**

27 12. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
28 and sections 490 and / or 2761, subdivisions (a), (d) and / or (f), and / or 2762, subdivisions (b)

1 and / or (c), in that on or about March 13, 2009, and / or on or about September 20, 2008,
2 Respondent committed acts which if done by a licensed registered nurse are grounds for license
3 discipline. Complainant refers to and by this reference incorporates the allegations set forth
4 above in paragraphs 10 - 11, inclusive, as though set forth fully.

5
6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board issue a decision:

- 9 1. Denying the application of Enrique Antonio Hernandez for a Registered Nurse
10 License; and
11 2. Taking such other and further action as deemed necessary and proper.

12 DATED: April 22, 2013

13 Louise R. Bailey
14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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